

IN THE SUPERIOR COURT FOR THE COUNTY OF RICHMOND

STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
	)	INDICTMENT
vs.	)	00 RCCR-1335
	)	
REINALDO J. RIVERA,	)	EXPARTE HEARING
Defendant.	)	

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HEARD BEFORE THE HONORABLE ALBERT M. PICKETT

JUDGE, SUPERIOR COURTS

AUGUSTA JUDICIAL CIRCUIT

Columbia County Courthouse

Appling, Georgia

February 5, 2001  
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APPEARANCES OF COUNSEL:

FOR THE STATE:

MS. ASHLEY WRIGHT  
Assistant District Attorney  
551 Greene Street  
Augusta, Georgia 30901

FOR THE DEFENDANT:

MR. PETER D. JOHNSON  
Attorney at Law  
445 Walker Street  
Augusta, Georgia 30901

MR. JACQUE HAWK  
Attorney at Law  
339 Telfair Street  
Augusta, Georgia 30901

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NANCY H. CULPEPPER, OFFICIAL COURT REPORTER

Augusta Judicial Circuit  
Room 205, 530 Greene Street  
Augusta, Georgia 30901  
(706) 821-2387

1 [Appling, Columbia County, Georgia; Monday, February 5, 2001,  
2 in chambers.]

3 THE COURT: ...counsel in chamber, me talking to  
4 defense counsel in chambers?

5 MS. WRIGHT: Guess not.

6 MR. JOHNSON: Guess not.

7 THE COURT: All right. I want Mr. Rivera in  
8 there with us.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: Would you mind cuffing him, please?  
11 I want security with us. And objection to that?

12 MR. JOHNSON: No, sir.

13 THE COURT: All right. Let me talk to the  
14 officers a minute. You're here just as security.  
15 Anything that is said during this conference in the  
16 presence of the defendant -- it's going to be on record.  
17 I'm instructing you to have no conversation with anybody  
18 about any aspect of it. Do y'all understand?

19 THE BAILIFFS/SECURITY: Yes, sir.

20 THE COURT: All right.

21 MR. JOHNSON: The only possible explanation that I  
22 could think of would be that Ms. Poteat at some point  
23 will argue to the jury that Mr. Rivera showed genuine  
24 remorse at the earliest opportunity and cooperated with  
25 law enforcement and gave a full and complete disclosure

1 of the facts. If she argues that in mitigation, then I  
2 can understand that. It may be that that would be a  
3 strategy that we would have to employ after we determine  
4 that these statements cannot be suppressed in any  
5 fashion, after we determine that we'll have to work with  
6 what he said to the police. It's just that it is so  
7 premature at this stage to make that call that I was,  
8 quite frankly, astounded that she did it and did it  
9 without consulting me.

10 **THE COURT:** Now what is the area that you  
11 mentioned where you thought you could be in conflict  
12 with it? That?

13 **MR. JOHNSON:** That, yes, sir. That. Apparently  
14 she's decided, okay, it's --

15 **THE COURT:** My question to you, though, is even  
16 if she were here, with that difference in strategy, that  
17 wouldn't affect the way you're handling the Georgia  
18 case, would it?

19 **MR. JOHNSON:** I wouldn't think so, no.

20 **THE COURT:** So --

21 **MR. JOHNSON:** Do you want us to invite her here?

22 **THE COURT:** My only concern is with his South  
23 Carolina defense really. I don't know why I'm taking up  
24 our Court time to concern myself with his South Carolina  
25 defense, but I think his South Carolina lawyer needs to

1 be over here listening, taking notes, realizing that  
2 this is sworn testimony that could possibly affect her  
3 South Carolina defense.

4 MR. JOHNSON: She'll have access to transcripts.

5 THE COURT: I understand that she will. I think  
6 we're okay, but it's just a matter of trying to be  
7 careful.

8 MR. JOHNSON: Yes, sir.

9 MR. HAWK: -- Judge, that's the --

10 THE COURT: It's going to be too late to get her  
11 over here today. It's a matter of in the future.

12 MR. HAWK: The only thing that concerns me about  
13 this is that it was made clear to Peter that yes, we put  
14 her on the list and give her access to Ray, you know, to  
15 be able to see him, but we wanted also to know what was  
16 going on and to make sure that she did not do anything  
17 that interfered with our defense of him in the Georgia  
18 case. And that was the agreement that we understood she  
19 was going to operate under and that she would let us  
20 know if she had any plans for him or anything like that.  
21 Now unbeknownst to us, she gives an investigator with a  
22 video camera, a recorder and everything and goes and  
23 gives him a complete confession on the Tiffaney Wilson  
24 case, all of that without any notice to us, without us  
25 knowing anything, and we think that it's interfering

1 with out ability to represent him.

2 MR. JOHNSON: What we did learn subsequent to it  
3 is that she very carefully tailored the interview to  
4 only talk about Tiffaney Wilson, but I'm not sure how,  
5 why that's a distinction in her mind.

6 THE COURT: Does she understand the similar  
7 transactions concept? Do they have it over in Carolina?

8 MR. JOHNSON: Yes. I'm sure she understood that,  
9 yes, sir. And it's interesting -- you can tell that the  
10 police investigator is very uncomfortable as well, with  
11 his role as adjunct to the public defender. And I think  
12 I recall some discussion about the Tiffaney Wilson  
13 family wanting - quote - closure. We all hear about the  
14 closure, I believe that that had something to say as  
15 well.

16 MR. HAWK: And another issue, too, is Rey, when  
17 he gave this statement, was under the impression that  
18 Ms. Poteat had spoken to us and that this was what we  
19 wanted. When it wasn't at all.

20 MR. JOHNSON: It's clearly inconsistent with what  
21 I had been trying to do up until that point, which was -  
22 -

23 MR. HAWK: And this was after Pete had said no  
24 more --

25 THE COURT: Which was keep --

1                   **MR. JOHNSON:** Stop the flood of conversation.

2                   **MR. HAWK:** Cause it's not like --

3                   **THE COURT:** Had you instructed Mr. Rivera to say  
4 nothing to anyone?

5                   **MR. JOHNSON:** No, sir. I honestly did not think  
6 it necessary at that point.

7                   **THE COURT:** So prior to that, you had not given  
8 him specific instructions that it was your advice for  
9 him to say nothing to anyone?

10                   **MR. JOHNSON:** Well, I never specifically said you  
11 shouldn't talk to your lawyer in South Carolina, because  
12 that's exactly how I represented, how I presented Ms.  
13 Poteat to him. I said this is your lawyer, she'll be  
14 defending you in South Carolina. So I'm sure he felt  
15 that whenever she came to him again, that he should do  
16 what she wanted him to do.

17                   **THE COURT:** All right. My next and final  
18 question would be did you instruct Mr. Rivera that he  
19 was not to give any statements to any investigator  
20 henceforward without your knowledge, advice and consent?

21                   **MR. JOHNSON:** I did, but I either implicitly or  
22 directly told him police investigator. I'm sure I did  
23 not think to include a defense attorney.

24                   **THE COURT:** All right.

25                   **MR. JOHNSON:** A defense attorney who brought a

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police investigator to him.

**THE COURT:** Okay. Let's take a few minutes'  
break ourselves and come back.

[Upon completion of the Unified Appeal Hearing a  
brief recess is taken.]

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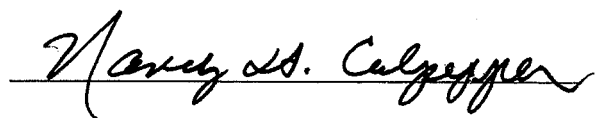
C E R T I F I C A T E

G E O R G I A  
C O L U M B I A C O U N T Y

I, Nancy H. Culpepper, Certified Court Reporter,  
CCR-A43, hereby certify that I reported the EXPARTE hearing  
as stated in the caption and supervised a true, accurate and  
complete transcript of the proceedings as contained in the  
foregoing pages 1 through 7.

I FURTHER CERTIFY that I am not a party to, related to,  
nor interested in the event or outcome of such proceedings.

WITNESS my hand and official seal this 20th day of  
February, 2001.



NANCY H. CULPEPPER, CCR-A43

CERTIFIED COURT REPORTER